APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,693

NEW CASTLE COUNTY AIRPORT COMMISSION, PETITIONER,

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

ALLEGHENY AIRLINES, INC., INTERVENOR

Petition for Review of Orders of the
Civil Aeronautics Board

Decided November 17, 1966

Mr. Robert M. Beckman for petitioner.

Mr. Frederic D. Houghteling, Attorney, Civil Aeronautics Board, with whom *Assistant Attorney General Turner, Messrs. Joseph B. Goldman,* General Counsel, *O. D. Ozment,* Deputy General Counsel, *Warren L. Sharfman,* Associate General Counsel, Civil Aeronautics Board, and *Howard E. Shapiro,* Attorney, Department of Justice, were on the brief for respondent. *Mr. Lionel Kestenbaum,* Attorney, Department of Justice, and *John H. Wanner,* General Counsel, Civil Aeronautics Board at the time the record was filed, also entered appearances for respondent.

Mr. Edwin I. Colodny for intervenor. *Mr. David B. Armstrong* also entered an appearance for intervenor.

Before BAZELON, *Chief Judge,* WILBUR K. MILLER, *Senior Circuit Judge,* and LEVENTHAL, *Circuit Judge.*

LEVENTHAL, *Circuit Judge:* Petitioner seeks review of orders of the Civil Aeronautics Board which amended the certificate of public convenience and necessity of Allegheny Airlines, a federally subsidized local-service carrier serving Wilmington, Delaware, so as to delete Wilmington as a separate intermediate point on Allegheny's route segment 3, which runs from New York to Pittsburgh via Philadelphia and Wilmington. The Board acted under section 401(g) of the Federal Aviation Act,[1] which authorizes it to amend any carrier's certificate if the public convenience and necessity so require, and pursuant to the Board's "use it or lose it" policy,[2] whereby cities which do not make sufficient use of subsidized air service to justify its cost to the carrier and the government are subject to decertification proceedings under section 401(g). Petitioner, a governmental agency operating the Wilmington Airport, challenges the Board's action and the consequent loss of direct service between Wilmington and Pittsburgh. We find the Board's action free of reversible error.

The Board made its decision by weighing several factors: the inconvenience to Wilmington passengers in having to use the extensive westward services of the nearby Philadelphia airport, the volume of traffic that would be affected by the deletion, the amount of subsidy cost required to maintain the Wilmington service. This factor balancing approach is a proper method for determining what is required by the public convenience and necessity. See *Outagamie County* v. *CAB,* 355 F.2d 900, 906-08 (7th Cir. 1966). The Board's findings as to the various factors are amply supported by the record. In appraising the overall public interest, the Board emphasized that Wilmington was in a unique position, since the

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[1] 49 U.S.C. § 1371(g).

[2] 14 C.F.R. § 399.11 (1966).

relatively short driving time to the Philadelphia airport, where more frequent service is of course available, in effect gives Wilmington residents the benefit of direct service from a nearby airport.

Petitioner contends that the balancing approach, though utilized by the Board in proceedings to certify a regional airport, is contrary to the Board's established approach in decertification proceedings involving the "use it or lose it" policy. Under that established approach, petitioner says, deletion is precluded if the minimum use of five enplanements per day is met. But the Board's policy statement regulation expressly advises that the 5 per day factor was a necessary but not sufficient condition of continuation of service.[3] However useful as a guideline, it was not made a decisive criterion against decertification. When not controlled by a regulation even an established approach or precedent may be modified or overruled. An administrative agency concerned with furtherance of the public interest is not bound to rigid adherence to precedent.[4] It may switch rather than fight the lessons of

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[3] The regulation, 14 C.F.R. § 399.11(b) (1966), states: Under this "use it or lose it" policy, the Board will require each city to originate an average of five or more passengers per day during the 12-month period following the initial 6 months of operations . . . . A city generating the bare traffic minimum during this trial period cannot safely assume that continued service is assured; the Board expects most cities to exceed the minimum requirements.

[4] Pinellas Broadcasting Co. v. FCC, 97 U.S.App.D.C. 236, 238, 230 F.2d 204, 206, *cert. denied*, 350 U.S. 1007 (1956); Philadelphia Television Broadcasting Co. v. FCC, —— U.S.App.D.C. ——, 359 F.2d 282 (1966). As Judge Prettyman aptly noted (230 F.2d at 206): "The Commission's view of what is best in the public interest may change from time to time. Commissions themselves change, underlying philosophies differ, and experience often dictates changes."

The same philosophy also permits modification of a policy crystallized in a regulation, provided the regulation is duly modified.

experience. An agency reversing its course should supply an opinion or analysis indicating that the standard is being changed and not ignored, and assuring that it is faithful and not indifferent to the need for adherence to standards.[5] But petitioner does not show that the case at bar involes any such reversal. It adduces no precedent wherein the Beard held that the 5 per day standard precluded decertification notwithstanding factors substantially similar to this case in terms of alternative convenience, high subsidy cost and low volume. The Board acted properly in emphasizing the key factors that loomed large in this proceeding.

Petitioner does not advance its position by arguing that it had no advance notice that a novel approach would be used. There was novelty in the facts—at least in the context of a "use it or lose it" decertification proceeding.[6] Moreover, reference to a balancing approach as novel is a strange argument. Without minimizing the need or importance of articulation of subsidiary decisional criteria and working rules, a "balancing" approach would seem to be inherently available to an agency engaged in the task of charting the public interest in the varying situations

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[5] Compare City of Lawrence v. CAB, 343 F.2d 583 (1st Cir. 1965. The court had under consideration the Board's order in the New England Regional Airport Investigation. It affirmed the order permitting Northeast Airlines to delete service to Lawrence Massachusetts, in view of the key fact of "the proximity of Lawrence to Boston and the ready accessibility of Lawrence to Boston." However it reversed, and remanded, the order for deletion of service at New Haven and consolidation with service at Bridgeport. The court noted the Board's departure without explanation from the reasoning of earlier cases, and also referred to "internal inconsistencies" with other aspects of the same proceeding. *Id.* at 588; see West Ohio Gas Co. v. Public Util. Comm. of Ohio, 294 U.S. 63, 71 (1935).

[6] Similar factual situations led to deletion of service in other types of proceedings. See, *e.g.*, City of Lawrence v. CAB, *supra*, note 5, as to deletion of service at Lawrence.

presented for determination. It may be assumed, at least for sake of discussion, that there may be reversible error where a prior agency approach has misled a party to fail to offer proof on a point the agency has now treated as crucial. Here, however, petitioner offered evidence on the key factors considered in the Board's opinion, convenience vel non of the Philadelphia airport, anticipated volume of traffic, and subsidy costs; and petitioner makes no claim that there is material evidence that it did not submit but would have submitted if it had known that a balancing approach would be used.

Petitioner has a valid point in its contention that the Board's ultimate finding was that the public convenience and necessity did not require continuance of the service, whereas the statutory test is satisfied only if the Board finds that the public convenience and necessity affirmatively requires deletion. We are not prepared to treat the difference as inconsequential, as the Government urges. But this claim was not made before the Board. In view of the complete factual record and the clear statement in the Board's opinion setting forth the reasons for deletion if found persuasive, we do not think the interest of justice would be served by remand for further proceedings.

Affirmed.

Filed Nov. 17, 1966

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1966

No. 19,693

NEW CASTLE COUNTY AIRPORT COMMISSION, *Petitioner,*

v.

CIVIL AERONAUTICS BOARD, *Respondent,*

ALLEGHENY AIRLINES, INC., *Intervenor.*

On Petition for Review of Orders of the Civil Aeronautics Board.

Before: Bazelon, Chief Judge, Wilbur K. Miller, Senior Circuit Judge, and Leventhal, Circuit Judge.

Judgment

This case came on to be heard on the record from the Civil Aeronautics Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the orders of the Civil Aeronautics Board on review in this case are hereby affirmed.

Per Circuit Judge LEVENTHAL

Dated: Nov. 17, 1966

Filed Jan. 9, 1967

Order

On consideration of petitioner's petition for rehearing *en banc,* it is

ORDERED by the court *en banc* that petitioner's aforesaid petition is denied.

Per Curiam

APPENDIX B

1. United States Constitution

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Relevant provisions of the Federal Aviation Act, 72 Stat. 731, 49 U.S.C. 1301 *et seq.*:

TITLE I—GENERAL PROVISIONS

* * * * *

Declaration of Policy: The Board

Sec. 102. [72 Stat. 740, 49 U.S.C. 1302] In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound

economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

3. Sec. 401. [72 Stat. 754, as amended by 76 Stat. 143, 49 U.S.C. 1371]

Issuance of Certificate

(d)(1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

Authority to Modify, Suspend, or Revoke

4. 401(g) The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or

in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided,* That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

5. Federal Aviation Act of 1958, as amended, 49 U.S.C. 1376(a) and (b):

Sec. 406(a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same.

Sec. 406(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board

considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

6. Federal Aviation Act of 1958, as amended, 49 U.S.C. 1485(f):

Sec. 1005(f) Every order of the . . . Board shall set forth the findings of fact upon which it is based. . .

7. Relevant provisions of the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 1001 et *seq.*:

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Public Information

Sec. 3. [60 Stat. 238, 5 U.S.C. 1002] Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) *Rules.*—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of

its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

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Adjudication

8. Sec. 5. [60 Stat. 239; 5 U.S.C. 1004] In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) *Notice.*—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the pro-

ceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) *Procedure.*—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controvery by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

9. Sec. 7 [60 Stat. 241; 5 U.S.C. 1006] In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) *Presiding Officers.*—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) *Hearing Powers.*—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon

offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) *Evidence.*—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) *Record.*—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

Decisions

10. Sec. 8. [60 Stat. 242; 5 U.S.C. 1007] In cases in which a hearing is required to be conducted in conformity with section 7—

(a) *Action by Subordinates.*—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(b) *Submittals and Decisions.*—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions

of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

Judicial Review

11. Sec. 10. [60 Stat. 243; 5 U.S.C. 1009] Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) *Right of Review.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) *Form and Venue of Action.*—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) *Reviewable Acts.*—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the

final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) *Interim Relief.*—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) *Scope of Review.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and satutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of section 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that

the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

12. 14 C.F.R. 399.11

(d) *Continued use of local carrier services.* In evaluating the continuing need for air service at any point or on any route segment served by a local service carrier, the Board will use the minimum traffic standard of five passengers as a guide line, regardless of the type or duration of an authorization. The Board will require the local service carriers to make appropriate periodic reports of traffic results. Air carrier management is expected to suggest route or authorization modifications as soon as deficiencies in service become apparent. When a city or route segment fails to make continued use of subsidized services, the carrier is free, and is encouraged, to apply for a suspension of service in advance of a Board proceeding to terminate the certification. The failure of a local service carrier to exercise vigilance in this regard may, in fact, reflect upon the economy and efficiency of management in proceedings to determine subsidy needs under section 406 of the Act.

13. The Board's "Notation" Procedure:

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

[SEAL]

In Reply Refer to: B-11

June 3, 1966

Received June 6, 1966 R. M. B.

Mr. Robert M. Beckman
Haffer & Beckman
703 Ring Building
Washington, D. C. 20036

Re: *New Castle County Airport Commission* v. *Civil Aeronautics Board*, C.A.D.C. No. 19,693

Dear Mr. Beckman:

In accordance with your request, I am attaching certified excerpts from the official C.A.B. Minutes relating to the Board's notation procedure.

The Board will bill you for its services, the fees and charges as set forth in Part 389 of its Organization Regulations.

Very truly yours,

/s/ HAROLD R. SANDERSON
Harold R. Sanderson
Secretary

Attachment

ATTACHMENT A

EXCERPT FROM MINUTES OF A MEETING OF THE CIVIL AERONAUTICS BOARD HELD AT ITS OFFICE IN WASHINGTON, D. C. APRIL 23, 1957

PRESENT: Mr. Durfee, Chairman, Mr. Gurney, Vice Chairman, Mr. Denny, Mr. Hector—Members of the Board

The Board convened at 10:05 a.m.

* * * * *

2. *Ratification of actions taken by Notation on April 12, 15, 16, 17, 18, 19 and 22, 1957.* The Board ratified the following actions taken by Notation on the dates shown:

* * * * *

(10) Approval of a statement of "Procedure for Handling Notation Items" (exhibit 511) and of "Tally Sheet" (exhibit 511a) for recording of Members' votes in connection with the Notation process. (April 17, 1957)

* * * * *

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

EXHIBIT 511

Procedure for Handling Notation Items

Matters for consideration and action by the Board which, in the opinion of the originating office, will not require discussion by the Members may be circulated for approval as follows:

(1) *Dating and Numbering.* Upon receipt of the document, the Minutes Section will stamp the date it is received in the Minutes Section and assign a Notation Number for identification and control purposes.

(2) *Signature Cases.*

a. Where signatures of Members are required, the Minutes Section will forward study copies to each Member simultaneously and information copies to the Staff members concerned. Normally a signature copy will be circulated first to the Vice Chairman, if present and concurring, then to the other Members, and lastly to the Chairman.

b. When a Member is unable to take action within a reasonable time (normally within three working days), he will forward the signature copy to the Member next in order of routing and advise the Minutes Section accordingly.

c. The Minutes Section will recirculate signature copies for information and/or approval of all language changes. However, technical changes correcting citations, references, grammer, minor stylistic flaws, etc., will not be considered language changes unless so indicated by the person making the correction.

d. Members desiring to make a substantial change in language, express a comment, or ascertain the views of other Members, will request that the item be calendared.

(3) *Tally-Sheet Cases.*

a. When initials, rather than signatures, are sufficient, the Minutes Section will attach a pink tally sheet (CAB Form 124, copy attached) to study copies and forward such copies to all Members simultaneously. Information copies will also be sent to all staff members concerned.

b. The Minutes Section will indicate in the upper right-hand corner of each tally sheet a time limit which allows three working days for taking action, and in the event of an emergency, a closer time limit will be shown. In such cases an explanation of the special circumstances involved will appear on the first page of the Notation document.

c. The Member will indicate his position on the recommended action by (1) checking the appropriate box on the Tally Sheet (and, where he disapproves, indicating whether or not he wishes his dissent to be shown on the outgoing document, if any); (2) initialing in the space provided; and (3) returning the Tally Sheet to the Minutes Section.

d. When a Member wishes to postpone voting beyond the time limit, he will indicate under "Comments" his reasons for postponing his vote. Upon advice that the Member is prepared to vote, the Minutes Section will furnish another Tally Sheet.

e. When a Member approves or disapproves a recommendation, but adds comments, the Minutes Section will bring such comments to the attention of the other Members and, where necessary or desirable, to the attention of the Office(s) or Bureau(s) concerned.

(4) *Delivery of Notation Documents.* To assure prompt action on Notation items (whether signature or tally sheet cases), all documents should be hand carried among the Members' Offices and the Minutes Section. Special Messengers are available for this purpose.

(5) *Report on Status of Notation Items.* The Minutes Section will prepare and distribute to the Members twice weekly a report on the status of pending Notation items. When an item has been held beyond the designated time limit, the report will show the office holding such item and the reason therefor, if known. Items will be considered as completed only after the Minutes Section has received positive indication of the position of each Member.

ATTACHMENT B

EXCERPT FROM MINUTES OF A MEETING OF THE CIVIL AERONAUTICS BOARD HELD AT ITS OFFICE IN WASHINGTON, D. C., JANUARY 7, 1958

PRESENT: Mr. Durfee, Chairman, Mr. Gurney, Vice Chairman, Mr. Denny, Mr. Minetti, Mr. Hector—Members of the Board

The Board convened at 10:20 a.m.

• • • • •

3. *Suggestions for Revised Board Procedures.* (Calendar Items 1, 2, and 3.) The Board considered various suggestions aimed at expediting the transaction of its day-to-day business. After full discussion the following was unanimously agreed to:

(a) *Submission of matters to the Board for action*

• • • • •

Any item presented for action by notation will be calendared at the request of a Member of the Board who

feels that its nature warrants Board discussion. But when in the first instance a Member merely has a question or questions regarding the notation item he will endeavor, through his Assistant, to resolve the question or questions by discussion with the originating Office or Bureau. To facilitate this, all notation memoranda will indicate the name and telephone extension of the person or persons most familiar with the subject matter, and this requirement will also apply to memoranda dealing with items to be calendared for Board discussion.

Except when impossible due to circumstances beyond control, memoranda presenting matters for Board action will be submitted to the Members at least 24 hours prior to the date the matter is to be taken up for calendar discussion, or to a deadline for action by notation, in order to permit adequate study by the Members. The staff concerned will be expected to give clear and positive reasons in justification of any deadline requiring departure from the foregoing rule.

* * * * *

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

[SEAL]